RULE 111. JOINDER, CONSOLIDATION AND INTERVENTION

(a) Joinder.

(1) *Joinder of Claims and Remedies*. Grandparent visitation and emancipation actions shall not be joined with other Family Division actions. Any other claim, counterclaim or request for relief that could be brought as a separate Family Division action may be joined to an action under these rules.

(2) *Joinder of Persons or Entities*. The only persons who may be joined as parties to an action under these rules are persons or entities specifically authorized to file or participate in a Family Division action by Title 19-A of the Maine Revised Statutes. However, persons who file emancipation or grandparents visitation actions may not be joined.

(b) Consolidation. Rule 42 governs consolidation in Family Division matters.

(c) Intervention. A person may petition to intervene in a Family Division action only when that intervention is specifically authorized by statute, or when the individual or entity would be authorized to file a complaint or post-judgment motion involving one or more of the same parties and issues that are being addressed in the Family Division action in which the person is seeking to intervene. Where intervention is authorized, practice regarding intervention is governed by Rule 24.

Advisory Notes
June 2008

Joinder, consolidation and intervention capability for Family Division actions is very different from regular civil practice. In civil practice, joinder of actions involving parties and claims is liberally allowed. In Family Division actions, subdivision (a)(1) prohibits joinder of grandparent visitation and emancipation actions. Subdivision (a)(1) further limits joinder only to other claims or remedies that could be originally brought as a Family Division action. This is derived from Rule 80(b). Thus, for example, an action for assault may not be joined with an action for divorce.

An earlier version of this draft included a sentence similar to 19-A M.R.S. § 953(4) (2007), which provides:

> **4. Disposition of marital property.** If both parties to a divorce action also request the court in writing to order disposition of marital property acquired by either or both of the parties to the divorce prior to January 1, 1972, or non marital property owned by the parties to the divorce action, the court shall also order disposition in accordance with subsection 1.

Section 953(4)'s predecessor – 19 M.R.S.A. § 722-A(4) - was enacted in response to the *Young v. Young*, 329 A.2d 386, 390 n. 4 (Me. 1974), which raised, but did not decide, the question of whether the then new equitable distribution statute could be constitutionally applied to property acquired prior to the enactment of the statute. This question was subsequently answered in the affirmative in *Fournier v. Fournier*, 376 A.2d 100, 102 (Me. 1977). In *Bryant v. Bryant*, 411 A.2d 391 (Me. 1980), the Law Court observed that section 953(4)'s predecessor – 19 M.R.S. § 722-A(4) – had become surplusage and the written request it provided for was no longer required. Thus, reference to section 953(4), and the corresponding sentence in the earlier draft of Rule 111(a)(1) is no longer necessary to assist resolution of property division issues.

Subdivision (a)(2) narrowly restricts those persons who may be joined in a Family Division action. The only persons who may be joined to a Family Division action would be individuals or entities (most often the DHHS), who would be authorized to file or participate in a Family Division action involving the same subject matter, except for persons who assert or defend grandparent visitation and emancipations actions. Thus two mothers could join a child support enforcement action against one father of their children. DHHS could also join the action.

Subdivision (b) of this rule relates to the consolidation of matters for trial. The court's authority and flexibility under current Rule 42 is sufficient to cover issues of consolidation in Family Division actions. Courts should consolidate Family Division actions for trial with protection from abuse actions only when consolidation does not delay any necessary hearings to insure the safety or protection of a party or the minor child or children of a party.

Subdivision (c) indicates that no parties may intervene in an action except where intervention is specifically authorized by statute or where the individual or entity seeking to intervene would be authorized to bring or participate in an action involving the same subject matter under the Family Division rules. In cases where intervention may be authorized, the practice for intervention is governed by Rule 24.

RULE 112. DISCOVERY

(a) Discovery Limitations. In any proceeding under this chapter, a party may obtain discovery on issues of spousal and child support, counsel and guardian ad litem fees, and disposition of property and debt as in any other civil actions. However, when financial statements are required under Rule 108(c), discovery may be initiated only after the parties have filed and exchanged the financial statements. If the exchange does not occur, the party who has filed a financial statement may serve discovery after the time period has expired as provided in Rule 108(c). On other issues, including parental rights and responsibilities, discovery may be served only by order of the court for good cause shown.

(b) Financial Statements. In any proceeding under this chapter upon motion of a party or its own motion, the court may order the parties to file and exchange financial statements or child support affidavits when the filing of these documents is not required under Rule 108. The court may also order the supplementation of financial statements or child support affidavits.

(c) Discovery Procedure. Where discovery occurs, discovery practice shall be governed by Rules 26 through 37. If a party fails to comply with discovery, compliance with discovery may be enforced by a judge or magistrate. A magistrate may impose sanctions for failure to comply with discovery, including but not limited to those set forth in Rule 37, but excluding any sanctions or penalties based upon a determination of contempt under Rule 66.

(d) Updated Statements. The parties shall update child support affidavits and financial statements 7 days before trial.

Advisory Notes
June 2008

Rule 112 is based on Rule 80(g). It extends the restrictions on discovery presently applicable to divorce cases to all Family Division actions. Under this rule—and the present Rule 80(g)—discovery without court approval is limited to financial issues. If Rule 108 requires the filing of financial statements, discovery may begin only after parties have exchanged financial statements or after a party has filed a financial statement and waited for the expiration of the time periods under Rule 108. On issues other than financial issues, discovery may be had only with court approval for good cause shown. Thus, no discovery is allowed, without court approval, on parental rights and responsibilities issues.

Rule 108 (c) does not require the filing of financial statements in all actions. For example, post-judgment motions and Complaints for Determination of Parental Rights and Responsibilities do not require filing of financial statements. Therefore in those proceedings, discovery may be initiated as permitted in the Rules 26 through 37. The court, however, may require the filing of financial statements if such exchange of information would reduce the amount of discovery. In addition, if the filing of a child support affidavit is not required under Rule 108, the court may order the filing and exchange of child support affidavits if the court obtains information indicating that the child support should be reviewed. Also the court may order supplementation of the financial statement or child support affidavit.

Where discovery occurs, discovery practice shall be as provided in Rules 26 through 37. The discovery rules provide adequate tools for both discovery and providing testimony for trial. The rule provides that magistrates shall have the authority to impose sanctions for failure to comply with discovery, including but not limited to those set forth in Rule 37, but excluding any sanction or penalties based upon a determination of contempt under Rule 66.

The preferred practice is that financial information is updated before a trial, and as a result the updating requirement is set in the rules.

RULE 113. TIME FOR FINAL HEARING

An action for divorce or annulment shall not be in order for final hearing until 60 days or more after service of the summons and complaint; nor shall it be in order for hearing until there is on file with the court a statement signed by the plaintiff, which may be contained in the complaint, stating whether any divorce or annulment actions have previously been commenced between the parties, and if so the designation of the court or courts involved and the disposition made of any such actions. Except as the court may otherwise direct, no case involving real estate shall be ready for final hearing until the real estate certificates have been completed as required by Rule 108.

If the responding party has not entered an appearance, the party initiating the action shall file a Federal Affidavit stating under oath that the responding party is not serving in the military or an affidavit signed by the responding party waiving rights conferred by the Service Members Civil Relief Act.

Other matters may be scheduled for trial at such time as pretrial proceedings are complete and the matter is in order for hearing on the merits. All actions under this chapter shall be transferred to the trial list by order of the court.

Advisory Notes
June 2008

Rule 113 is based on Rule 80(i). By referring to final hearings, the rule clarifies that interim hearings are available to the parties before the 60 days.

The rule recognizes that the court has the authority to set cases for trial or final hearing and that in some actions such as Emancipation, Motions for Enforcement and Motion for Contempt, the court may order a case to a final hearing without going through the case management system. This paragraph of the rule is derived from Rule 80(h).

RULE 114. TRIAL

(a) Trial Process. A judge, or a magistrate where authorized, shall preside over the trials of all issues presented for decision in accordance with this chapter and the child support guidelines. The Maine Rules of Evidence shall govern trials, except that where a witness is presented as an expert on any issue, the court may, in its discretion, allow or require that a written report of the expert be offered in lieu of all or a portion of that individual's direct testimony. However, the expert must be available for cross-examination and questioning by the court and for any redirect examination on issues that are fairly raised in the cross-examination or questioning by the court. The proponent of the report shall request a prehearing conference before the trial to address all issues surrounding use of the expert's report, when the court has not previously addressed those issues.

(b) Final Orders by Family Law Magistrates.

(1) *Child Support*. A magistrate may enter final orders relating to child support, including orders to establish, modify or enforce child support obligations, whether or not the matter is contested.

(2) *Other Matters*. A magistrate may enter final judgments or orders on other issues by agreement of the parties or when the matter is unopposed. A magistrate may review and approve or reject a settlement agreement. When rejecting a settlement agreement, a magistrate may refer the parties to mediation or direct them to proceed to a case management conference or trial before a judge.

Advisory Note
June 2008

Rule 114 is based on Rule 38 and FAM DIV III.E.&F. but limited to Family Division cases and recognizing the ability of both the court and magistrates, with appropriate authorization, to try Family Division cases. Subdivision (a) incorporates by reference the child support guidelines as a matter for trial decision-making. Subdivision (a) also makes one adjustment in current practice to recognize an issue that frequently recurs in Family Division cases. It states that the Maine Rules of Evidence govern trial proceedings. However, the rule also allows trial courts, if they wish to do so, to require that where expert witnesses are presented, reports of the expert

witness be presented in lieu of direct testimony. The expert witness still must be available for cross-examination, questioning by the court, and limited redirect examination to issues brought up on cross-examination and not adequately addressed in the report. The purpose of this provision is to aid courts in better understanding expert presentations by having the expert's written report available to read, rather than being forced to take notes as the expert's report is given through direct examination. This alternative approach, in non-jury cases, improves both the efficiency of the proceeding and the court's understanding of the testimony and reflects an informal practice that is used today in some courts. The amendment requires the parties and the court to address this issue before the hearing.

Subdivision (b) addresses final orders that may be issued by Family Law Magistrates. It is based on FAM DIV III.F. It also recognizes that there is a pilot project permitting Family Law Magistrates to hear contested final hearings with the consent of the parties.

RULE 115. NO JUDGMENT WITHOUT HEARING; JUDGMENTS TO BE FINAL

(a) Hearing.

Unless otherwise provided by these rules, no judgment, other than a dismissal for want of prosecution, shall be entered in an original action under these rules except after hearing, which may be ex parte if a party does not appear. With the permission of the court, a party may appear at a hearing by telephone or by video-conference.

(b) Finality. Unless otherwise ordered by the court on its own motion or on request of a party, any order granting a divorce, annulment, judicial separation, disposition of property, or other disposition, award, or division of property incident to a divorce, annulment, judicial separation or any order relating to paternity, parentage, parental rights and responsibilities including child support, emancipation, and visitation rights of grandparents, other than a temporary or interim order under these rules, shall be a final judgment, notwithstanding the pendency of any other claim or counterclaim in the action.

Advisory Notes
June 2008

Rule 115 is based on Rule 80(f). Current practice specifically authorized by Rule 80(f) appears more liberal than some of the current provisions of the Family Division rules by allowing appearances and participation by parties who do not file answers and other documents. *See* FAM Div.III.H.1. Hearing rights, without a prior appearance, are addressed in Rule 105(a).

The current practice is to permit parties to appear at hearing by telephone or by video-conference, particularly in uncontested matters. The court has discretion to determine whether the interests of justice are served by permitting a party to appear and testify by telephone or by video-conference in a contested matter.

The rule is amended to list all the actions that may be brought under this chapter. It specifies that no judgment in an original action may be entered without a hearing. Judgments and orders on post-judgment motions may be entered without a hearing when there is an agreement regarding the post-judgment motion or order.

RULE 116. DISMISSAL OF ACTIONS

Rule 41 shall govern practice under this chapter regarding dismissal of actions, except that all dismissals shall be without prejudice unless the court specifically indicates that a dismissal is with prejudice and precludes further litigation of the same issue. Any new action addressing issues similar to a dismissed action shall be subject to appropriate counterclaims and defenses.

Advisory Notes
June 2008

Rule 116 incorporates Rule 41 relating to dismissals with a special provision under the Family Division Rules. That provision allows filing of another action to address similar issues subject to appropriate counterclaims and defenses following the dismissal of a prior action that is not a final judgment on the merits. Thus, when a divorce action is filed but dismissed

without a final judgment, that dismissal does not preclude a subsequent divorce action from being filed, heard, and decided on the merits. The same non-preclusive effect of a dismissal would apply to other Family Division actions unless the court, in entering the dismissal, specially indicated that the dismissal was with prejudice, precluding further litigation of the same issues.